

REMARKS

Applicant thanks Examiner Davis and Examiner Tate for their time and consideration of the present application during the telephonic interview of June 9, 2009 with the undersigned.

During the interview the teachings of GUPTA and WINSTON were discussed. Additionally, a proposed amendment to claim 9 was introduced. The Examiners suggested further amending claim 9 in a manner consistent with the Examples discussed in the present specification, i.e., to recite specific skin appendages, such as hair and nails. The Examiners also noted that the proposed amendment to claim 9 would require further consideration and/or search.

Accordingly, the present amendment, which is intended to place the application in condition for allowance, has been filed along with a Request for Continued Examination.

Status of the Claims

Claim 9 is amended. Support for the amendment to the claims may be found, for example, at page 3, lines 8 to page 4, line 18, and the Examples of the specification.

Claims 9 and 11-25 remain in this application.

Information Disclosure Statement

The Official Action stated that the IDS of December 30, 2008 did not comply with 37 CFR §1.97, 1.98 and 609, as an

English language equivalent was not provided of the foreign language documents.

Applicant respectfully disagrees. The IDS stated that EP 0/55633 is related to U.S. 6,471,969. That is, U.S. 6,471,969 is the English language equivalent to EP 0/55633. Thus, consideration of this document is respectfully requested.

Claim Rejections-35 USC §103

Claims 9 and 11-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over WINSTON et al. WO 02/100329 ("WINSTON") in view of GUPTA US 2004/0105894 ("GUPTA"). This rejection is respectfully traversed for the reasons below.

The claimed method is directed to treating conditions of the skin, hair, nails and/or overweight conditions of a human in need thereof by orally administering a combination product. This combination product comprises a first composition (a) containing a green tea extract, vitamin C, and optionally at least one metallic compound select from zinc, chromium and a mixture thereof, and a second composition (b) containing at least one metallic compound selected from iron, copper, chromium and a mixture thereof. These compositions are separately and consecutively orally administered, and zinc and iron are not simultaneously present in the same composition.

WINSTON was offered for teaching a two-part composition comprising a lipid-soluble portion in a soft gel cap form, which

is lipid-based, and a water-soluble portion in a hard shell capsule or tablet form. The water-soluble portion may include vitamin C and green tea extract, and the lipid soluble portion may include tocopherols and/or zinc. These portions are used to treat conditions of the skin. The Official Action acknowledged that there was no suggestion for iron or copper in either portion.

GUPTA was offered for teaching trace metals, e.g., iron, copper and zinc, for use in treating skin disorders and aging of the skin.

The position maintained by the Official Action was that it would have been obvious to include one or more trace metals taught by GUPTA to the lipid-soluble portion to achieve the benefits discussed by GUPTA.

However, this proposed combination of WINSTON and GUPTA fails to render obvious the claimed invention for at least three reasons:

1. The documents solve different problems.

WINSTON solves the problem of diminishing the effects of the aging process by providing an orally administered dietary supplement. GUPTA solves the problem of administering copper and other trace metals via topical applications. See, e.g., [0074] of GUPTA.

Thus, there would have been no expectation of success in making such a modification, as there was no evidence of any efficacy achieved via topical administration could have been achieved by oral administration.

2. The proposed modification is contrary to Gupta.

The rejection was based on adding the trace metals of GUPTA to the lipid-based soft gel capsule of WINSTON, considered the second composition (b). However, the trace metals are only in the water-soluble phase of GUPTA, as GUPTA discloses that trace metals undesirably oxidize fatty ingredient components. See, e.g., [0045] and [0075].

Thus, one of ordinary skill in the art would have been strongly discouraged from adding the trace metals to the lipid based portion of WINSTON, as this would render the lipid phase undesirable for its intended use: oxidized lipid components would affect the quality of the orally administered drug capsule.

3. The combination fails to teach the claimed invention.

There is no suggestion that the proposed combination would be effective at treating overweight conditions, e.g., as described in the Examples of the present specification.

Additionally, there is no suggestion to avoid providing zinc and iron simultaneously in the same composition. GUPTA randomly mentions trace metals, but does not disclose that

simultaneous intake of zinc and iron should be avoided. WINSTON, however, at page 11, lines 20-31, states that the water soluble component and the lipid soluble component should be taken together.

Thus, the combination fails to teach the claimed invention.

Therefore, for at least the three reasons discussed above, the proposed combination fails to render obvious the claimed invention, and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the amendment to the claims and the foregoing remarks, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our credit card which is being paid online simultaneously herewith for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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